



IMMIGRATION IN THE COURTS

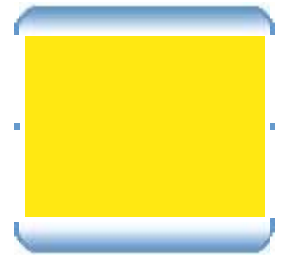
Burdened by appeals

A Justice Dept. plan to reduce backlog of immigration cases has done so, but also driven up federal appeals

BY TOM BRUNE
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WASHINGTON - A two-year-old Justice Department initiative to reduce the backlog of immigration cases prompted a spiraling rise in appeals in federal courts, particularly in New York, officials said yesterday.



The number of immigration appeals have quadrupled to 40 percent of the caseload in the beleaguered 2nd Circuit Court of Appeals in New York, leading Deputy Attorney General James Comey last month to issue an emergency order to require federal prosecutors from as far away as Seattle to pitch in to help, officials said.

"It's created havoc everywhere," said Roseann B. MacKechnie, clerk of the court for the 2nd Circuit, which covers New York, Connecticut and Vermont.

The 2nd Circuit has between 4,000 and 4,300 pending immigration appeals, loading hundreds of cases on each of the 10 attorneys assigned to those issues in the office of U.S. Attorney David Kelly in New York, officials said.

Court officials say the brunt of the immigration appeals have fallen on the two major judicial circuits on the East and West coasts - the 2nd and the 9th Circuit in San Francisco.

Nearly all who have studied the issue, including the American Bar Association, the Association of the Bar of New York City and immigration lawyers, traced the surge back to an initiative introduced by Attorney General John Ashcroft in 2002.

That initiative, they said, essentially shifted the burden of the immigration appeals cases from the administrative system within the Justice Department to the judicial system of the federal appellate courts.

In 2001, the Board of Immigration Appeals at Justice had 23 judges who met in three-judge panels to review decisions on petitions for asylum or similar matters made by immigration officers or judges. But it had a 56,000-case backlog.

To erase the backlog, the initiative reduced the number of judges to 11, ended the use of three-judge panels and encouraged routine upholding of the initial decisions in the cases without accompanying decisions to explain

the action.

The initiative has been effective, according to the Justice Department, reducing the board's administrative backlog to 33,000 cases as of October.

At the same time, the proportion of cases appealed to the federal courts, the next level of review, has risen dramatically, to 25 percent from 5 percent.

One reason is more aggressive enforcement of immigration law since the Sept. 11, 2001, terrorist attacks, said Marshall Fitz of the American Immigration Lawyers Association.

Justice officials, who said the courts have upheld the initiative despite legal challenges, said the rise in appellate cases could be the result of attempts to postpone deportation.

But immigration lawyers said it is because the board no longer provides meaningful review when it issues decisions without accompanying opinions.

"The idea that you could just rubber stamp a lot of cases at the agency and they would go away was just mistaken," said Nancy Morawetz, a professor of clinical law at New York University School of Law. "If you don't get fair consideration at the agency, it's not surprising that you'd get a greater number appealed to the court."

Comey's order requires attorneys at Justice headquarters in Washington and in U.S. attorney offices across the country to take on some of the immigration appeals.

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